IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 985 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALUBHAI FATESINGH PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DF AMIN for Appellant(s) : 1,
MR AJ DEDSAI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 01/05/2007

ORAL JUDGMENT

1. Heard ld. Counsel Mr. DF Amin for the appellant accused and ld. APP Mr. AJ Desai for the respondent State.

2. The present appeal is filed by the present appellant accused challenging the legality and validity of the judgment and order of conviction and sentence passed by the ld. Special Judge, Panch Mahals at Godhara in Special Summary case No.6/1997(ESTP) dated 15.10.1998 whereby the ld. Trial Judge has held the appellant accused guilty of the offence punishable under section 3 read with section 7 of the Essential Commodities Act (EC Act for short). The case against the accused was tried summarily by the ld. Trial Judge. The case of the prosecution is that the accused was found in possession of 32 liters of blue colour kerosene i.e. in excess of 18.5 liters of kerosene which is the maximum limit prescribed for storage of blue colour kerosene for personal consumption. This act of the appellant accused was in violation of the Kerosene Control Order. Blue colour kerosene is being sold through fair price shop under the directions issued by the government and stock of the kerosene found with the accused was blue colour kerosene. The ld. Trial Judge held that the prosecution has led sufficient evidence to link the appellant accused

with crime and imposed R/I for 6 months and asked him to pay a fine of Rs.500/, I/d to undergo further R/I for one month for the offence punishable under section 3 read with section 7 of the EC Act.

3. According to Mr. Amin, the ld. Trial Judge has erred in appreciating the evidence led by the prosecution. The ld. Trial Judge ought to have kept the basic case of the prosecution in mind while appreciating the evidentiary value of each witness examined and adequacy of the evidence was required to be tested before holding the accused guilty.

4. According to Mr. AJ Desai, ld. APP for the State, the evidence led by the prosecution is adequate and there was no reason for the Court to discard the evidence of police officer who intercepted the accused when he was carrying kerosene in two different tins on bicycle in the early morning between 8.00 & 9.00 a.m. One Police Constable who was in the company of PSI has also supported the case of the prosecution. The case against the accused was registered initially under section 41(1)(d) of CrPC

and on the strength of total facts that were placed before the Mamlatdar, the accused was prosecuted. Of course, in the present case, panchas have not been examined, but as the accused was not holding valid licence or parvana to hold kerosene beyond 18.5 liters, the conscious possession of the accused of the stock of more than 18.5 liters of kerosene technically brings him under the book and, therefore, the decision of holding the accused appellant guilty requires to be upheld.

5. Mr. DF Amin, ld. Counsel appearing for the appellant accused has taken me through the entire judgment and order of conviction and sentence and also the evidence led during the course of trial. Infirmities pointed out by Mr. Amin, if are narrated in short, then they are:-

(i) There is no scientific data to show that the kerosene that was allegedly found from the accused was blue colour kerosene and nobody including the police officer or Mamlatdar has a reason to believe that the same must have been

collected from any fair price shop or government supply depot.

(ii) No fair price shop dealer has been examined and accused had attempted to explain that he has been wrongly implicated and there is no evidence to show that kerosene found with him was a blue colour kerosene otherwise required to be sold and distributed to the public at large through fair price shops only.

(iii) It is emerging from record that the stock was seized by the Mamlatdar on the information given by the PSI of concerned police station and stock was given to one another fair price shop dealer so that he can distribute the stock seized. It is admitted by one of the prosecution witnesses that when stock was handed over to fair price shop dealer, a specific reference was not made that the kerosene is being handed over to him is blue colour kerosene. Absence of reference as to colour of the kerosene in such a vital document has

widened the doubt as to the quality of the kerosene found allegedly in possession of the accused.

(iv) There is serious dispute as to the place where the accused was intercepted. It is alleged that he was going on bicycle with entire stock of 32 liters of kerosene. At that time, initial inquiries were made and accused was not able to explain about the kerosene carried by him on a bicycle and so, he was detained under the preventive provisions under the CrPC. When it is the case of the prosecution that while doing this exercise, a detailed panchanama was prepared in presence of the panch, then to prove this crucial aspect, the prosecution ought to have examined at least one of the panchas of the panchanama. Panchanama has been received in evidence and the same has been read as substantive piece of evidence though the contents of the panchanama has not been proved by any of the panchas.

(v) It was risky for the trial Court to accept

the words of the police constable accompanying the Inspector at relevant point of time as gospel truth especially when there was scope for the prosecution to examine independent witness like panch witness.

(vi) Admission mad by the accused before the police was not admissible in evidence. Even then, the ld. Trial Judge appears to have considered the same while drawing inference against the accused. It is error apparent of law committed by the ld. Trial Judge.

(vii) One of the important witness namely Mamlatdar himself has accepted that he initiated criminal prosecution because kerosene was a blue colour kerosene otherwise he would not have initiated such proceedings. When there is no clear evidence with scientific data that the kerosene found from the accused was blue colour kerosene available for public distribution system, he could not have been linked with th crime.

6. I have considered the above arguments of ld.

Counsel Mr. DF Amin for the appellant in light of the oral as well as documentary evidence led by the prosecution. In my view, there is force in the arguments of ld. Counsel Mr. Amin. It is pertinent to note that the The accused has attempted to explain about the stock stating that because of two consecutive lots purchased by him on different dates as he was entitled to do that month-wise, 32 liters of kerosene was with him meaning thereby that there is no bar in accumulating the stock for personal consumption. This defence has not been found acceptable by the trial Court. This finding of the ld. Trial Judge even if held to be logical and legal, but when mens rea is an important aspect in the cases under the EC Act and total stock was not exceeding 37 liters, then in a given case, the accused can be given benefit of doubt. For example, suppose a person purchases kerosene weighing about 18.5 liters for his personal consumption in a one calender month and that too in the last week of that month. Some times kerosene stock is made available to the fair price shopkeepers in the last week of the month and sometimes in the earlier part of the month

stock may not be available for disposal with the dealer. If that person starts using that stock of kerosene and in the mean time if dealer receives stock of kerosene for the next month in the first or second week of that month, then bona fide purchaser and genuine user of the kerosene can again go to fetch the stock of kerosene for that month for him considering the uncertainty of availability of the stock in the next month i.e. third month. So, it is likely that he would be having stock of kerosene of 18.5 liters accumulated with him for two months viz. about 37 liters. So, when the stock is undisputedly found below 37 liters of kerosene, then the Court ought to have tried to find out the presence of mens rea in the present case, which is totally absent. So, the arguments advanced by the ld. Counsel Mr. Amin are found acceptable.

7. In view of the totality of the facts and circumstances that are emerging from record, the Court is of the view that the appellant accused deserves benefit of doubt on account of inadequacy of the evidence led by the prosecution and non-

examination of the panch by the prosecution and so also because of certain facts stated by Mamlatdar in his deposition. Hence, present appeal requires to be allowed.

8. In the result, the present appeal is hereby allowed. The impugned judgment and order of conviction and sentence dated 15.10.1998 passed by ld. Special Judge, Panch Mahals at Godhara in Special Summary Case No.6/1997 is hereby quashed and set aside and the appellant accused is hereby acquitted from the offences for which he has been charged and held guilty. Fine, if paid, be refunded to the appellant accused on proper identification. Appellant accused is on bail, his bail bonds stand cancelled/ discharged.

[C.K. BUCH, J]

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